

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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|--------------------------------------|---|-------------------------------------|
| IN RE: | § | |
| | § | |
| QUALITY INFUSION CARE, INC. | § | Bankruptcy Case No. 10-36675 |
| | § | |
| Debtor. | § | |
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| RANDY W. WILLIAMS, | § | |
| CHAPTER 7 TRUSTEE, | § | |
| Plaintiff, | § | Civil Case No. H-13-0421 |
| | § | |
| vs. | § | |
| | § | |
| PATRICIA D. SALVATO, M.D. and | § | |
| DIVERSIFIED MEDICAL | § | |
| PRACTICE, P.A., | § | |
| Defendants. | § | |

**TRUSTEE’S MOTION TO COMPROMISE CONTROVERSY
UNDER BANKRUPTCY RULE 9019 WITH PATRICIA D. SALVATO, M.D.
AND DIVERSIFIED MEDICAL PRACTICE, P.A.**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

**To the Honorable Jeff Bohm,
Chief United States Bankruptcy Judge:**

Randy W. Williams, chapter 7 trustee (the “Trustee”) for the estate of Quality Infusion Care, Inc. (“QIC”) files this Motion to Compromise Controversy with Patricia Salvato, M.D. and

Diversified Medical Practice, P.A. (collectively, the “Settling Party”) under Rule 9019 of the Federal Rules of Bankruptcy Procedure.

Summary of Relief Requested

1. The Trustee seeks approval of a settlement resolving Civil Case No. 13-0421, *Randy W. Williams, Chapter 7 Trustee v. Patricia Salvato, M.D. and Diversified Medical Practice, P.A.*, concerning certain payments by QIC to the Settling Party which the Trustee alleges were preferences or fraudulent transfers. Under the proposed compromise, the Settling Party shall pay the Trustee \$20,000 and the Trustee shall release all claims against the Settling Party. A detailed description of the proposed compromise is set forth below. **While the Settling Party has agreed to the proposed compromise, the factual recitations set forth herein are solely those of the Trustee and are not necessarily agreed to by the Settling Party.**

Statement of Facts

2. QIC filed a voluntary chapter 11 case on August 3, 2010 (the “Petition Date”). The Court appointed the Trustee as the chapter 11 trustee in the case by Order dated September 27, 2010. The QIC case was converted to a chapter 7 case on January 21, 2011. The Trustee was subsequently appointed as the chapter 7 trustee in the case.

3. On August 1, 2012, the Trustee filed Adversary Proceeding No. 12-3341, *Randy W. Williams, Chapter 7 Trustee v. Patricia Salvato, M.D. and Diversified Medical Practice, P.A.*, against the Settling Party seeking to avoid and recover payments of \$1,567,355.64 made by QIC to the Settling Party as fraudulent transfers pursuant to 11 U.S.C. §§ 544 and 548 and applicable state law or preferences pursuant to 11 U.S.C. § 547.

4. On March 5, 2013, the district court withdrew the reference of the adversary proceeding.

5. On May 31, 2013, the Settling Party filed two motions for summary judgment. One motion sought dismissal of Dr. Salvato because all payments were made to Diversified Medical Practice, P.A. (the "Practice"). The other motion sought dismissal of \$1,124,961.81 in payments because they were based on drug purchases made by the Debtor through the Practice's account and the funds were almost immediately transferred out of the Practice's account to pay for the drug invoices.

6. On June 24, 2013, the Trustee filed a second amended complaint which eliminated the payments on drug invoices and reduced the amount in controversy to \$408,455.43.

7. Upon further investigation and discovery by the Trustee, the remaining amount in controversy is comprised of (1) \$54,375.00 for lease payments on a sublease between QIC and the Practice, (2) \$137,850 was paid directly to the Practice, and (3) \$216,230.43 paid to a QIC Management Company account related to the Debtor's management of the Practice.

8. The specific terms of the settlement are set forth below.

The Proposed Settlement

9. Subject to Court approval, the parties have agreed as follows:

- Within twenty-one (21) days of the entry of an order approving this proposed compromise, the Settling Party shall pay to the Trustee \$20,000.00 (the "Settlement Payment"). The Settlement Payment will be made payable to Randy W. Williams, chapter 7 trustee, c/o Joshua W. Wolfshohl, Porter Hedges LLP, 1000 Main St., Suite 3600, Houston, Texas 77002.
- Upon receipt of the Settlement Payment, the Trustee agrees to release all potential causes of action the estate may have against the Settling Party, including but not limited to causes of action pursuant to Chapter 5 of the Bankruptcy Code.

Merits of the Compromise

10. The merits of a proposed compromise should be judged under the criteria set forth in *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). *TMT Trailer* requires that a compromise must be “fair and equitable.” *TMT Trailer*, 390 U.S. at 424; *In re AWECO, Inc.*, 725 F.2d 293, 298 (5th Cir.), *cert. denied*, 469 U.S. 880 (1984). The terms “fair and equitable” mean that (i) senior interests are entitled to full priority over junior interests; and (ii) the compromise is reasonable in relation to the likely rewards of litigation. *In re Cajun Electric Power Coop.*, 119 F.3d 349, 355 (5th Cir. 1997); *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

11. In determining whether a proposed compromise is fair and equitable, a Court should consider the following factors:

- (i) the probabilities of ultimate success should the claim be litigated;
- (ii) the complexity, expense, and likely duration of litigating the claim;
- (iii) the difficulties of collecting a judgment rendered from such litigation; and,
- (iv) all other factors relevant to a full and fair assessment of the wisdom of the compromise.

TMT Trailer, 390 U.S. at 424. The Fifth Circuit has further elaborated on the factors to be considered in evaluating the wisdom of a proposed settlement. One factor to be considered is “the paramount interest of creditors with proper deference to their reasonable views.” *In re Foster Mortgage Corp.*, 68 F.3d 914, 917 (5th Cir. 1996). Another factor bearing on the wisdom of the compromise is the extent to which the proposed settlement is the product of arms-length negotiation. *In re Foster Mortgage Corp.*, 68 F.3d 914, 918 (5th Cir. 1996). In deciding whether to accept a compromise, a trustee is required to reach an informed judgment, after diligent investigation, as to whether it is prudent to eliminate the inherent risks, delays, and

expense of prolonged litigation. *In re Mailman Stream Carpet Cleaning Corp.*, 212 F.3d 632 (1st Cir. 2000). A court is not to substitute its own judgment for that of the trustee, but rather to “canvass the issues” and determine whether the settlement “falls below the lowest point in the range of reasonableness.” *In re W.T. Grant Co.*, 699 F.2d 599, 609 (2d Cir. 1983).

12. The Trustee believes that the proposed compromise satisfies the requirements established by the Supreme Court in *TMT Trailer*.

Analysis of Proposed Compromise

13. Probabilities of Ultimate Success. The remaining transfers in the Trustee’s second amended complaint are grouped into three categories: rent payments, payments made directly to the Practice, and payments made to QIC Management Company’s Practice account. The Settling Party may have a defense to the rent payments because the Debtor did sublease space from the Settling Party to operate an infusion clinic during this time period. Additionally, the Settling Party has a defense to the payments which were made to the QIC Management Company’s Practice account because the Debtor controlled that account. Accordingly, the potential fraudulent transfer exposure on these amounts is minimal. That leaves only the \$137,850 that was paid directly to the Practice. Establishing that the Practice did not provide reasonably equivalent value for these payments would be extremely difficult given the poor condition of the Debtor’s books and records related to the income of the Practice. Consequently, the Trustee has determined that the proposed compromise is in the best interest of all concerned parties and that this factor supports the proposed settlement.

14. Complexity, Expense and Likely Duration. Counsel for the Trustee is retained on a stair-step contingency fee that does not increase based on whether a judgment is obtained before or after trial. Accordingly, this factor did not weigh heavily in the Trustee’s decision.

15. Difficulty in Collecting Judgment. While the Trustee has not been presented with any specific evidence of the Settling Party's inability to pay, the Trustee's experience with other doctor cases brought in the QIC bankruptcy case is that collectability may be an issue. Accordingly, this factor weights in favor of the proposed settlement.

16. Other Factors. The Trustee believes that the proposed compromise is equitable and serves the purposes underlying the Bankruptcy Code.

Accordingly, the Trustee requests that this Court approve the proposed settlement and compromise set forth above and for such other relief as is just.

Dated: September 4, 2013.

Respectfully submitted,

Porter Hedges LLP

By: /s/ Joshua W. Wolfshohl
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Counsel for Randy W. Williams, Trustee

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was duly served by United States first class mail to all parties listed on the attached Service List and by electronic transmission to all registered ECF users appearing in the case on September 4, 2013.

/s/ Aaron J. Power
Aaron J. Power

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